

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

TIMOTHY JAMES KANE,

Plaintiff,

v.

TOWN OF SANDWICH,

Defendant.

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Case No. 1:13-CV-12771-DJC

**PLAINTIFF’S BRIEF REGARDING THE ADMISSIBILITY OF
NICHOLAS GIAMMARCO’S TESTIMONY**

Plaintiff, Timothy James Kane (“Kane”), intends to call Nicholas Giammarco (“Giammarco”), a former patrolman at the Sandwich Police Department, who is expected to testify that Administrative Sergeant Michael Nurse (“Nurse”) told him in early 2011, while they were on duty at the Sandwich Police Department, that Sandwich’s Chief of Police Peter Wack (“Chief Wack”) stated: “How can I stop these guys [Kane and Bill Patton¹] from deploying.”

Giammarco’s testimony is admissible under Federal Rule of Evidence 801(d)(2)(D). Rule 801(d)(2)(D) provides that a statement is not hearsay if the “statement is offered against a party and is ... a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship.” *Id.*; see e.g. *Woodman v. Haemonetics Corp.*, 51 F.3d 1087 (1st Cir. 1995) (in ADEA claim, **statement by a supervisor that new management wanted to bring in younger employees was not hearsay even though statement was offered for its truth because it was an admission by party opponent, and statements concerned matters within the scope of the supervisor’s employment**) (attached).

Accordingly, Giammarco’s testimony is properly admissible under Rule 801(d)(2)(D).

¹ Patton is a patrol officer at the Sandwich Police Department who also serves in the military.

Respectfully submitted,

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants, on March 9, 2016.

/s/ Joseph A. Napiltonia

Joseph A. Napiltonia